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FROM: Carl M. Varady, Esq.

DATE: December 8, 2008

RE: Estate of Francisco Sison, et al vs. Estate of Ferdinand Marcos (No. 29372)

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COMMENTS: Enclosed are two (2) file-stamped copies of Plaintiff-Appellants' Opening Brief.

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Ashley V. Labusan
Legal Assistant to Carl M. Varady

NO. 29372

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I

ESTATE OF FRANCISCO SISON, JOSE MARIA SISON, and JAIME PIOPONGO, Plaintiff-appellants, vs. ESTATE OF FERDINAND E. MARCOS, Defendants-appellees.	ORIGINAL PRECEDING PLAINTIFF-APPELLANTS' OPENING BRIEF; CERTIFICATE OF SERVICE

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CLERK, APPELLATE COURTS
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PLAINTIFF-APPELLANTS' OPENING BRIEF

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Statutes and Rules

Plaintiff-Appellants ESTATE OF FRANCISCO SISON, JOSE, MARIA SISON, and JAIME PIOPONGO, through her undersigned attorney, hereby submit their opening brief in this appeal.

I. CONCISE STATEMENT OF THE CASE.

Appellants are victims of *jus cogens* human rights violations who received federal judgments against the Estate of Ferdinand E. Marcos in 1995. They contend that their judgments were not "rendered" within the meaning of H.R.S. § 657-5 until all appeals were final and their amended judgments were entered in the district court in 1997. Unless their judgments are extended another 10 years -- as they have requested the federal court – the judgments will lapse and they will be unable to execute thereon. Appellants, therefore, request this Honorable Court to answer the Certified Question by stating that under H.R.S. § 657-5 an appealed judgment is not rendered until all appeals are final or the time for appeal has expired.

At the conclusion of an historic trifurcated trial spanning 3 years, a federal jury in Hawai'i found the Estate of Ferdinand E. Marcos liable for massive human rights abuses, including torture, summary execution and disappearance, committed against Filipinos during the Marcos dictatorship in the Philippines. The district court possessed subject matter jurisdiction of the litigation pursuant to the Alien Tort Statute, 28 U.S.C. § 1350. Among the individual plaintiffs receiving compensatory damage awards were Jaime Piopongco ($175,000) and the Estate of Ferdinand Sison ($400,000). Piopongco's claim for loss of property was disallowed by the district court, and the claim of Jose Maria Sison for compensatory damages was denied by the district court for insufficient evidence. Following a defense motion for new trial or remittitur, judgments were entered for Piopongco and the Estate of Ferdinand Sison on August 11, 1995 for $75,000 and $100,000 together with pro rata shares of a $1.2 billion award for

exemplary damages and permanent injunctive relief. Final judgment in all cases in the consolidated multi-district litigation was entered by the Clerk of Court on December 6, 1995 pursuant to Rule 58 of the Federal Rules of Civil Procedure. *See United States v. Indrelunas*, 411 U.S. 216 (1973).

Piopongco appealed the denial of his claim for loss of property to the Ninth Circuit Court of Appeals, and Sison appealed his denial of damages. The Ninth Circuit reversed the district court's rulings, *Hilao v. Estate of Ferdinand Marcos*, 103 F.3d 789 (9th Cir. 1996), which resulted in the entry of an amended final judgment for Piopongco and Sison on October 3, 1997. Piopongco's total amended judgment is for $507,027.72. Sison's total amended judgment is for $882,027.72.

On October 2, 2007 – one day short of 10 years after entry of the amended judgment -- Piopongco, Sison and the Estate of Ferdinand Sison filed a motion in the district court to extend their judgments an additional 10 years pursuant to H.R.S. § 657-5 which provides in pertinent part:

> Unless an extension is granted, every judgment and decree of any court of the State shall be presumed to be paid and discharged at the expiration of ten years after the judgment or decree was rendered. No action shall be commenced after the expiration of ten years from the date a judgment or decree was rendered or extended. No extension of a judgment or decree shall be granted unless the extension is sought within ten years of the date the original judgment or decree was rendered. A court shall not extend any judgment or decree beyond twenty years from the date of the original judgment or decree. No extension shall be granted without notice and the filing of a non-hearing motion or a hearing motion to extend the life of the judgment or decree.

The district court held a hearing on the motion on September 12, 2008.[1] For reasons articulated by the district court at the hearing, the court entered an order certifying a question to the Hawai'i Supreme Court on September 26, 2008.

II. CONCISE STATEMENTS OF POINTS ON APPEAL.

By Order entered October 16, 2008, this Court agreed to decide the following certified question:

> With regard to the time period for executing a judgment in H.R.S. § 657-5, does the time period begin after the appellate process is completed (because the appeal may provide relief in the form of damages not provided for in the original judgment and because the completion of the appellate process allows the judgment creditor to proceed without limitation to collect the judgment) , or, in the alternative, given that an amended judgment establishes the relationship between judgment creditor and debtor, does an amendment or modification of the original judgment (including an amended judgment providing for additional relief) start the time period anew?

III. STANDARDS OF REVIEW.

Statutory interpretation is "a question of law reviewable *de novo*." *State v. Levi*, 102 Hawai'i 282, 285, 75 P.3d 1173, 1176 (2003) (*quoting State v. Arceo*, 84 Hawai'i 1, 10, 928 P.2d 843, 852 (1996)). This court's statutory construction is guided by established rules:

> First, the fundamental starting point for statutory interpretation is the language of the statute itself. Second, where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning. Third, implicit in the task of statutory construction is our foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. Fourth, when there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists.

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[1] The delay is attributable to an appeal pending in the Ninth Circuit Court of Appeals in the class case as to whether H.R.S. § 657-5 applied to a federal judgment on a federal cause of action. The Ninth Circuit Court of Appeals ruled that it did apply on July 31, 2008.

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In the event of ambiguity in a statute, "the meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning." *Id.* (*quoting* H.R.S. § 1-15(1) (1993)). Moreover, the courts may resort to extrinsic aids in determining legislative intent, such as legislative history, or the reason and spirit of the law. *See* H.R.S. § 1-15(2) (1993).

IV. ARGUMENT.

A. The Answer to the Certified Question Has a Profound Impact on Federal Judgments.

By its own language, H.R.S. § 657-5 applies only to judgments entered in State Courts in Hawai'i. No federal court had ever held that a federal judgment on a federal cause of action was subject to sun setting under a state statute until the Ninth Circuit so ruled in *In re Estate of Ferdinand E. Marcos Human Rights Litig.*, 536 F.3d 980 (9th Cir. 2008). In that case, the class of 9,539 human rights victims with a judgment of almost $2 billion against the Estate of Ferdinand E. Marcos had obtained an order from the district court extending their judgment another ten years pursuant to H.R.S. § 657-5.[2] The order was entered more than 10 years after entry of final judgment in the consolidated cases, but less than ten years after affirmance of their judgment in the Ninth Circuit. *See, Hilao v. Estate of Ferdinand E. Marcos*, 103 F.3d 767 (9th Cir. 1996). The Ninth Circuit reasoned that since there was no case holding a federal judgment on a federal cause of action was **not** subject to a state sun setting law, state law must be applicable. It then construed the statute literally, stating:

[2] The request for the extension was precautionary since the class contended, *inter alia*, that federal judgments on federal causes of action did not sunset.

> HRS § 657-5 provides that the limitations period begins to run on "the date the original judgment or decree was rendered." It does not say ten years from the date of entry plus however much time it takes to appeal.

The Ninth Circuit relied on this Court's decision in *International Savings & Loan Ass'n v. Wiig*, 82 Hawai'i 197, 921 P.2d 117 (Haw. 1996), when it concluded that the statute's time limits were absolute whether or not an appeal was filed.

Appellants are informed that the class intends to file a petition for certiorari with the United States Supreme Court to overturn the Ninth Circuit ruling and has notified that Court of the pendency of the Certified Question in this case. Unless the decision of the Ninth Circuit is reversed, it will have a profound impact on money judgments and decrees entered in the federal court in Hawai'i. Every federal money judgment and decree rendered on a federal cause of action more than 10 years ago is now unenforceable. This includes federal consent decrees in the areas of antitrust, securities, civil rights, schools, housing, the environment, mental health and prisoner rights.

More specifically as it relates to the Certified Question, the Ninth Circuit's construction of when an appealed judgment is "rendered" pursuant to H.R.S. § 657-5 alters fundamental notions of finality as to both state and federal law and is contrary to most case law . In any event, it is this Court, not the Ninth Circuit, whose construction of H.R.S. § 657-5 is definitive.

B. A Judgment is "Rendered" When It Is Final After Appeal.

A cardinal principle of both Hawai'i and federal law is that a judgment is not final and binding until the exhaustion of appeals or expiration of the period to appeal. *Market Street R. Co. v. Railroad Commission*, 324 U.S. 548, 551-52 (1945); *FTC v. Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 212 (1952). A federal judgment is not final until the

mandate is spread on the record in the district court. *Bianchi v. Perry*, 154 F.3d 1023 (9th Cir. 1998). A state court judgment is not final and binding until all appeals are final. *Hoopai v. Civil Service Commission*, 106 Haw. 205, 103 P.3d 365 (2004); *Solarana v. Industrial Electronics. Inc.* 50 Haw. 22, 428 P.2d 411 (1967).

Execution on a judgment is subject to various restrictions and disabilities until the judgment is final and binding. Judgment debtors regularly request stays of execution pending appeal and, where the judgment require a turnover of real or personal property, stays are usually granted A federal judgment may not be transferred to another district under federal law until all appeals are exhausted or the time for appeal is expired. *See* 28 U.S.C. § 1963. A state court judgment may be transferred to another state for execution under the Uniform Act before appeals are final, but execution is automatically stayed if an appeal is pending. *See* H.R.S. § 636C-5. If execution on a Hawai'i judgment is permitted in Hawai'i pending appeal, the proceeds are subject to return to the judgment debtor if the judgment is reversed. The restrictions on execution pending appeal warrant this Court construing the term "rendered" as coextensive with final and binding after all appeals are concluded or the time for appeal has expired. Otherwise, the 10 year period of H.R.S. § 657-5 is artificially shortened. With appeals to successive courts sometimes taking years, judgment creditors are at a distinct disadvantage.

This Court has never determined when an appealed judgment is "rendered" pursuant to H.R.S. § 657-5. The judgment in *Wiig*, was not appealed. Nor was the judgment in *Brooks v. Minn*, 836 P.2d 1081 (1992) appealed. However, Hawaii's intermediate appellate court has suggested that an appealed judgment is "rendered" only after all appeals are final. *See Beecher Ltd. v. Alvarez & Marsal North America, LLC*, 187 P.3d 593 (Haw. App. 2008).

Over 100 years ago in *Borer v. Chapman*, 119 U.S. 587 (1887) the United States Supreme Court held that a federal judgment (based on diversity jurisdiction) is not "rendered" for purposes of a state sun setting law until all appeals are final. The Court affirmed the obvious point that "[i]t cannot be that the statute of limitations will be allowed to commence to run against a right until that right has accrued in a shape to be effectually enforced." *Borer v. Chapman*, 119 U.S. 587, 602 (1887). The key facts of the *Borer* case are similar to those of the present case. On April 19, 1872, a judgment was issued in favor of Chapman against Snow (in Snow's capacity as executor of John Gordon) for $7,264.25 plus costs, with interest to run from July 10, 1871. *Id.* at 593-94. On August 20, 1879, Chapman sought to collect this judgment by filing an action against the administrator of Gordon's estate and his legatees. These defendants contended that the action filed by Chapman on August 20, 1879 to collect his judgment was barred by the statute of limitations because it "should have been filed within one year from the date of the final judgment in that action," which, according to their contentions, occurred on April 19, 1872 (or perhaps even earlier, on July 10, 1871). *Id.* at 601.

The Supreme Court rejected this argument, explaining that "the judgment rendered April 19, 1872, was not the end of the litigation." *Id.* at 602. Snow had appealed the verdict, and the matter was pursued for several years by Snow's executor after Snow's death. The judgment was reversed on technical grounds, *Smith v. Chapman* 93 U.S. 41 (1876) (because "it was erroneous in form," 119 U.S. at 593), "[t]he mandate of this court was filed in the circuit court [on] June 7, 1877, and on December 18, 1878, the final judgment was entered against Snow as executor..." *Id.* Chapman's filing on August 20, 1879 was thus valid because it "was filed within 12 months after the date of that entry" referring to the entry of the final judgment on December 18, 1878, after all the appeals had been completed and the circuit court had issued a

new and technically-proper judgment. *Id.* Snow's executor argued that the effective date of the judgment for purposes of the statute of limitations should be July 10, 1871, but the Supreme Court explained that "[t]he date of that entry is by a fiction of law" and that "the right of the complainant in this bill to enforce that judgment by the present proceeding certainly did not begin until after the judgment in that form was actually entered." *Id.* Until that final judgment was "actually entered" on December 18, 1878, "the right of the complainant ... to enforce that judgment" "was in abeyance" because "the litigation had, until then ended, been continuously in progress." *Id.*

The view that state sun setting laws do not begin to run until the appeal process has been completed, or the time for filing an appeal has passed, is supported by numerous decisions. One of the recent opinions discussing this issue directly is *Home Port Rentals, Inc. v. International Yachting Group, Inc.*, 252 F.3d 399 (5th Cir. 2001), where the Fifth Circuit characterized the argument that Louisiana's statute of limitations for enforcing a judgment would begin when the trial court issued its judgment rather than at the time it was affirmed on appeal as "clearly specious." *Id.* at 406. It is hard to imagine a word that rejects the merits of an argument more clearly than "specious." Its strong language on this issue makes it clear that a state sun setting statute cannot begin until the appeal process is completed and the mandate has been issued by the appellate court. In *Andrews v. Roadway Express Inc.*, 473 F.3d 565 (5th Cir. 2006) the Fifth Circuit, construing a Texas sun setting statute, stated that "[t]he time-limit for enforcement began to run when the Supreme Court denied review of the judgment. *See John F. Grant Lumber Co. v. Bell,* 302 S.W.2d 714 (Tex.Civ.App.-Eastland 1957)."

Other decisions that have reached this same conclusion include, *e.g.*, *Kertesz v. Ostrovsky,* 8 Cal. Rptr. 3d 907, 910 (Cal. App. 2004) (explaining that a "statute of limitations for

an action on a judgment does not accrue until the judgment is final," and that a "judgment is not final until the time within which to the appeal the judgment has expired"); *Turner v. Donovan*, 126 P.2d 187 (Cal.App. 1942) (explaining that an action based on a judgment cannot be brought "until the issues between the parties had been determined finally" pursuant to "its final determination upon appeal, or until the time for appeal has passed"); *Ferris v. Independence Indem. Co.*, 12 P.2d 148, 149 (Cal.App. 1932) ("Both appellant and respondents concede the general rule to be that a judgment does not become final until it has been finally determined on appeal and that a right of action upon a judgment does not mature until the judgment becomes final."); *Anderson v. Shaffer*, 277 Pac. 185 (Cal.App.1929) (the statute of limitations regarding actions to collect a judgment "would commence after the time for appeal had elapsed, and the judgment attained finality"); *Drummond v. Green*, 35 Md. 148 (1872) (explaining that the statute of limitations began to run from the decision of the Court of Appeals, not from the decree of the inferior court).[3]

C. The Amendment of Appellants' Judgments Warrant a New Rendering Date

It is clear that Piopongco and Sison were unable to execute on their original judgments until the amended judgments were final and binding in October 1997. Sison had no money judgment until the amended judgment was entered, and Piopongco's original judgment was only half of his amended judgment. Under these facts, a rendering date of 1995 makes no sense, as they were unable to execute on their ultimate judgments.

[3] The jurisprudence in the criminal context is consistent with limitation periods commencing to run upon issuance of the mandate. *See Clay v. United States*, 123 S.Ct. 1072 (2003); *Day v. McDonough*, 126 S.Ct. 1675 (2006); *Johnson v. Kenna*, 451 F.3d 938 (8th Cir. 2006).

V. CONCLUSION.

For all the foregoing reasons, this Court should answer the Certified Question by stating that under H.R.S. § 657-5 an appealed judgment is not rendered until all appeals are final or the time for appeal has expired.

DATED: Honolulu, Hawai'i, December 8, 2008.

CARL M. VARADY

Attorney for Plaintiff-Appellants'
ESTATE OF FRANCISCO SISON, JOSE MARIA SISON, and JAIME PIOPONGO

STATEMENT OF NO RELATED CASES

Pursuant to Rule 28, Haw. R. App. Pro., Plaintiff-Appellants state that there are no related cases known to be pending before Hawai'i courts or agencies arising out of or involving the same parties or issues to this case.

DATED: Honolulu, Hawai'i, December 5, 2008.

CARL M. VARADY

Attorney for Plaintiff-Appellants'
ESTATE OF FRANCISCO SISON, JOSE MARIA SISON, and JAIME PIOPONGO

CERTIFICATE OF SERVICE

I hereby certify that 2 (two) true and correct copies of the foregoing document was served upon the following via the means indicated below:

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> HRS § 657-5 provides that the limitations period begins to run on "the date the original judgment or decree was rendered." It does not say ten years from the date of entry plus however much time it takes to appeal.

The Ninth Circuit relied on this Court's decision in *International Savings & Loan Ass'n v. Wiig*, 82 Hawai'i 197, 921 P.2d 117 (Haw. 1996), when it concluded that the statute's time limits were absolute whether or not an appeal was filed.

Appellants are informed that the class intends to file a petition for certiorari with the United States Supreme Court to overturn the Ninth Circuit ruling and has notified that Court of the pendency of the Certified Question in this case. Unless the decision of the Ninth Circuit is reversed, it will have a profound impact on money judgments and decrees entered in the federal court in Hawai'i. Every federal money judgment and decree rendered on a federal cause of action more than 10 years ago is now unenforceable. This includes federal consent decrees in the areas of antitrust, securities, civil rights, schools, housing, the environment, mental health and prisoner rights.

More specifically as it relates to the Certified Question, the Ninth Circuit's construction of when an appealed judgment is "rendered" pursuant to H.R.S. § 657-5 alters fundamental notions of finality as to both state and federal law and is contrary to most case law . In any event, it is this Court, not the Ninth Circuit, whose construction of H.R.S. § 657-5 is definitive.

B. A Judgment is "Rendered" When It Is Final After Appeal.

A cardinal principle of both Hawai'i and federal law is that a judgment is not final and binding until the exhaustion of appeals or expiration of the period to appeal. *Market Street R. Co. v. Railroad Commission*, 324 U.S. 548, 551-52 (1945); *FTC v. Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 212 (1952). A federal judgment is not final until the

mandate is spread on the record in the district court. *Bianchi v. Perry*, 154 F.3d 1023 (9th Cir. 1998). A state court judgment is not final and binding until all appeals are final. *Hoopai v. Civil Service Commission*, 106 Haw. 205, 103 P.3d 365 (2004); *Solarana v. Industrial Electronics, Inc.* 50 Haw. 22, 428 P.2d 411 (1967).

Execution on a judgment is subject to various restrictions and disabilities until the judgment is final and binding. Judgment debtors regularly request stays of execution pending appeal and, where the judgment require a turnover of real or personal property, stays are usually granted A federal judgment may not be transferred to another district under federal law until all appeals are exhausted or the time for appeal is expired. *See* 28 U.S.C. § 1963. A state court judgment may be transferred to another state for execution under the Uniform Act before appeals are final, but execution is automatically stayed if an appeal is pending. *See* H.R.S. § 636C-5. If execution on a Hawai'i judgment is permitted in Hawai'i pending appeal, the proceeds are subject to return to the judgment debtor if the judgment is reversed. The restrictions on execution pending appeal warrant this Court construing the term "rendered" as coextensive with final and binding after all appeals are concluded or the time for appeal has expired. Otherwise, the 10 year period of H.R.S. § 657-5 is artificially shortened. With appeals to successive courts sometimes taking years, judgment creditors are at a distinct disadvantage.

This Court has never determined when an appealed judgment is "rendered" pursuant to H.R.S. § 657-5. The judgment in *Wiig*, was not appealed. Nor was the judgment in *Brooks v. Minn*, 836 P.2d 1081 (1992) appealed. However, Hawaii's intermediate appellate court has suggested that an appealed judgment is "rendered" only after all appeals are final. *See Beecher Ltd. v. Alvarez & Marsal North America, LLC*, 187 P.3d 593 (Haw. App. 2008).

Over 100 years ago in *Borer v. Chapman*, 119 U.S. 587 (1887) the United States Supreme Court held that a federal judgment (based on diversity jurisdiction) is not "rendered" for purposes of a state sun setting law until all appeals are final. The Court affirmed the obvious point that "[i]t cannot be that the statute of limitations will be allowed to commence to run against a right until that right has accrued in a shape to be effectually enforced." *Borer v. Chapman*, 119 U.S. 587, 602 (1887). The key facts of the *Borer* case are similar to those of the present case. On April 19, 1872, a judgment was issued in favor of Chapman against Snow (in Snow's capacity as executor of John Gordon) for $7,264.25 plus costs, with interest to run from July 10, 1871. *Id.* at 593-94. On August 20, 1879, Chapman sought to collect this judgment by filing an action against the administrator of Gordon's estate and his legatees. These defendants contended that the action filed by Chapman on August 20, 1879 to collect his judgment was barred by the statute of limitations because it "should have been filed within one year from the date of the final judgment in that action," which, according to their contentions, occurred on April 19, 1872 (or perhaps even earlier, on July 10, 1871). *Id.* at 601.

The Supreme Court rejected this argument, explaining that "the judgment rendered April 19, 1872, was not the end of the litigation." *Id.* at 602. Snow had appealed the verdict, and the matter was pursued for several years by Snow's executor after Snow's death. The judgment was reversed on technical grounds, *Smith v. Chapman* 93 U.S. 41 (1876) (because "it was erroneous in form," 119 U.S. at 593), "[t]he mandate of this court was filed in the circuit court [on] June 7, 1877, and on December 18, 1878, the final judgment was entered against Snow as executor..." *Id.* Chapman's filing on August 20, 1879 was thus valid because it "was filed within 12 months after the date of that entry" referring to the entry of the final judgment on December 18, 1878, after all the appeals had been completed and the circuit court had issued a

new and technically-proper judgment. *Id.* Snow's executor argued that the effective date of the judgment for purposes of the statute of limitations should be July 10, 1871, but the Supreme Court explained that "[t]he date of that entry is by a fiction of law" and that "the right of the complainant in this bill to enforce that judgment by the present proceeding certainly did not begin until after the judgment in that form was actually entered." *Id.* Until that final judgment was "actually entered" on December 18, 1878, "the right of the complainant ... to enforce that judgment" "was in abeyance" because "the litigation had, until then ended, been continuously in progress." *Id.*

The view that state sun setting laws do not begin to run until the appeal process has been completed, or the time for filing an appeal has passed, is supported by numerous decisions. One of the recent opinions discussing this issue directly is *Home Port Rentals, Inc. v. International Yachting Group, Inc.*, 252 F.3d 399 (5th Cir. 2001), where the Fifth Circuit characterized the argument that Louisiana's statute of limitations for enforcing a judgment would begin when the trial court issued its judgment rather than at the time it was affirmed on appeal as "clearly specious." *Id.* at 406. It is hard to imagine a word that rejects the merits of an argument more clearly than "specious." Its strong language on this issue makes it clear that a state sun setting statute cannot begin until the appeal process is completed and the mandate has been issued by the appellate court. In *Andrews v. Roadway Express Inc.*, 473 F.3d 565 (5th Cir. 2006) the Fifth Circuit, construing a Texas sun setting statute, stated that "[t]he time-limit for enforcement began to run when the Supreme Court denied review of the judgment. *See John F. Grant Lumber Co. v. Bell,* 302 S.W.2d 714 (Tex.Civ.App.-Eastland 1957)."

Other decisions that have reached this same conclusion include, *e.g., Kertesz v. Ostrovsky,* 8 Cal. Rptr. 3d 907, 910 (Cal. App. 2004) (explaining that a "statute of limitations for

an action on a judgment does not accrue until the judgment is final," and that a "judgment is not final until the time within which to the appeal the judgment has expired"); *Turner v. Donovan*, 126 P.2d 187 (Cal.App. 1942) (explaining that an action based on a judgment cannot be brought "until the issues between the parties had been determined finally" pursuant to "its final determination upon appeal, or until the time for appeal has passed"); *Ferris v. Independence Indem. Co.*, 12 P.2d 148, 149 (Cal.App. 1932) ("Both appellant and respondents concede the general rule to be that a judgment does not become final until it has been finally determined on appeal and that a right of action upon a judgment does not mature until the judgment becomes final."); *Anderson v. Shaffer*, 277 Pac. 185 (Cal.App.1929) (the statute of limitations regarding actions to collect a judgment "would commence after the time for appeal had elapsed, and the judgment attained finality"); *Drummond v. Green*, 35 Md. 148 (1872) (explaining that the statute of limitations began to run from the decision of the Court of Appeals, not from the decree of the inferior court).[3]

C. The Amendment of Appellants' Judgments Warrant a New Rendering Date

It is clear that Piopongco and Sison were unable to execute on their original judgments until the amended judgments were final and binding in October 1997. Sison had no money judgment until the amended judgment was entered, and Piopongco's original judgment was only half of his amended judgment. Under these facts, a rendering date of 1995 makes no sense, as they were unable to execute on their ultimate judgments.

[3] The jurisprudence in the criminal context is consistent with limitation periods commencing to run upon issuance of the mandate. *See Clay v. United States*, 123 S.Ct. 1072 (2003); *Day v. McDonough*, 126 S.Ct. 1675 (2006); *Johnson v. Kenna*, 451 F.3d 938 (8th Cir. 2006).

V. CONCLUSION.

For all the foregoing reasons, this Court should answer the Certified Question by stating that under H.R.S. § 657-5 an appealed judgment is not rendered until all appeals are final or the time for appeal has expired.

DATED: Honolulu, Hawai'i, December 8, 2008.

CARL M. VARADY

Attorney for Plaintiff-Appellants' ESTATE OF FRANCISCO SISON, JOSE MARIA SISON, and JAIME PIOPONGO

STATEMENT OF NO RELATED CASES

Pursuant to Rule 28, Haw. R. App. Pro., Plaintiff-Appellants state that there are no related cases known to be pending before Hawai'i courts or agencies arising out of or involving the same parties or issues to this case.

DATED: Honolulu, Hawai'i, December 5, 2008.

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CERTIFICATE OF SERVICE

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